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COPY MAILED

FEB 25 2004

OFFICE OF PETITIONS

In re Application of
Xuzhi Qin
Application No. 10/694,111
Filed: October 27, 2003
Attorney Docket No. 10-9436

DECISION DISMISSING PETITION

This is a decision on the petition filed December 11, 2003, requesting that the above-identified application be accorded a filing date of October 24, 2003, instead of the presently accorded filing date of October 27, 2003.

Petitioners request the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on October 24, 2003, pursuant to the requirements of 37 CFR 1.10. Petitioner submitted, *inter alia*, a copy of the application transmittal, a copy of the application as filed, a declaration from Allie Barrett, an employee of Inskeep Intellectual Property Group, Inc., and a copy petitioner's "Client Costs Log". The transmittal bears "Express Mail" tracking number EL993618067US but petitioner has not submitted a copy of the Express Mail mailing label as required for a petition under 37 CFR 1.10(d).

Paragraph (a) of 37 CFR 1.10 states that:

Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date.¹ (emphasis added)

Paragraph (d) of 37 CFR 1.10 states that:

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

¹See 37 CFR 1.6(a).

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS. Any statement submitted in support of such a showing pursuant to this paragraph must be a verified statement if made by a person other than an employee of the USPS or a practitioner as defined in § 10.1(r) of this chapter.

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail Post Office to Addressee' service of the USPS."

At the outset, it is noted that petitioners have not provided a true copy of the "Express Mail" customer label nor explained why a copy of the Express Mail customer label showing the "date in" has not been provided. Any renewed petition must be accompanied by a copy of the Express Mail label showing the "date in" as completed the USPS.

The declaration of Allie Barrett suggests that Express Mail package EL993618067US was "dropped off" at 4:19pm on October 24, 2003, before the last scheduled pick up. Ms. Barrett's declaration does not indicate however, "where" the purported "drop off" was made, nor what the last scheduled pick up was for that unidentified location.

Additionally, the Client Cost Log showing that \$13.75 was charged to petitioner's client for an express mail package does not bear proof that the specific express mail package in question, nor the contents of said package were in fact deposited in an express mail box prior to the last scheduled pick up for that box on October 24, 2003.

The petition filed on December 11, 2003, is not accompanied by the corroborating evidence required by the rule. The circumstances of this case instead lead to the conclusion that petitioner deposited the correspondence in an Express Mail drop box rather than directly with USPS employees. Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked.²

Accordingly, the petition is dismissed.

The Office of Initial Patent Examination has been notified to accord the above identified

²37 CFR 1.10(b).

application with a filing date of October 27, 2003.

Telephone inquiries concerning this matter may be directed to the undersigned
Petitions Attorney at (703) 305-4497.



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